

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is between the Office of the Indiana Attorney General (hereinafter the "State") and Identifax **Investigative Services, Inc.**, whose address is **P.O. Box 14884, North Palm Beach, FL 33408** (hereinafter "Contractor").

WITNESSETH

WHEREAS, the State requires investigatory services in State of Indiana v. **Gome Enterprise, Inc., et al.; and**

WHEREAS, the Contractor has specialized **knowledge** and expertise in providing the services needed by the State and is willing to provide such services.

NOW THEREFORE, in consideration of the premises and the mutual promises herein contained, it is agreed by and between the State and Contractor as follows:

1. Duties of Contractor. Contractor shall **perform investigatory services** as requested by the State involving **Gome Enterprises, Inc., et al.** Contractor shall execute their **responsibilities** by following and applying the highest professional standards.

2. Consideration. Contractor shall be paid at the rate of **fifty-five dollars (\$55.00)** plus **thirty-nine cents (\$0.39)** per mile plus expenses after the initial two hundred ninety-nine dollars (**\$299.00**) per subject to be located and served. The **maximum** amount payable under this Contract shall not exceed five thousand dollars (**\$5,000.00**). Contractor shall submit monthly **invoices** to the State showing with **particularity** the date and **description** of the services rendered.

3. Term. This Contract is for a period of one (1) year beginning on January 2, 2006 and ending on December 31, 2006. It may be renewed or extended only by written agreement.

4. Access to Records. The Contractor and its **subcontractors**, if any, shall **maintain all** books, documents, papers, **accounting** records, and other evidence **pertaining** to all costs incurred under this Contract. They shall make such materials available at their respective **offices** at all reasonable times during this Contract term, and for three (3) years from the date of **final** payment under this Contract, for **inspection** by the State or its authorized designees. **Copies** shall be **furnished** at no cost to the State if requested.

5. Assignment; Successors. The Contractor binds its **successors and** assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written **consent**. The Contractor **may assign** its right to receive payments to such third parties as the Contractor may **desire** without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. **The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.**

6. Audits. Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. **Any such** audit shall be conducted in accordance with IC 5-11-1, et. seq. and **audit** guidelines specified by the State.

7. Authority to Bind Contractor. The signatory for the Contractor represents that he/she has been duly **authorized** to execute this Contract on behalf of the Contractor and has **obtained all** necessary or **applicable** approvals to make this Contract fully binding upon the Contractor when

his/her signature is affixed, and certifies that this Contract is not subject to further acceptance by Contractor when accepted by the State.

8. Changes in Work. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

9. Compliance with Laws.

A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the contractor is not familiar with these ethical requirements, the contractor should refer any questions to the State Ethics Commission, or visit the State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the contractor. In addition, the Contractor may be subject to penalties under Indiana Code § 4-2-6-12.

C. The Contractor certifies by entering into this Contract, that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Contractor agrees that any payments currently due to the State may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, Contractor agrees that the State may delay, withhold, or deny work under this Contract and any supplements or amendments.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

F. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

G. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

H. The **Contractor** affirms that it is **properly** registered and owes no outstanding reports with the Indiana **Secretary** of State.

I. **Contractor** agrees that the State may confirm, at **my** time, that no liabilities exist to the State, and, if such liabilities are discovered, that State may bar Contractor from contracting with the State in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the Contractor is current in its payments on its liability to the State and has submitted proof of such payment to the State.

3. As required by IC 5-22-3-7:

(1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations], or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

(2) The Contractor and my principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor: (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law, and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

10. Condition of Payment. All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state, or local statute, ordinance, rule or regulation.

11. Ownership of Documents and Materials. All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State and all such material will be the property of the State. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this Contract shall be available to the State.

12. Confidentiality of State Information. The Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain confidential and protected data. The Contractor covenants that data, material, and information gathered, based upon, or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of the State.

13. Conflict of Interest.

A. As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party," means:

1. The individual executing this Contract;
2. An individual who has an interest of **three** percent (3%) or more of Contractor, if Contractor is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

- B. **The Department may cancel this Contract without recourse by Contractor if any interested party is an employee of the State.**
- C. **The Department will not exercise its right of cancellation under section B, above, if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the State of the interested party does not violate any statute or rule relating to ethical conduct of State employees. The Department may take action, including cancellation of this Contract, consistent with an opinion of the Commission obtained under this section.**
- D. **Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the State. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.**

14. Debarment and Suspension.

A. **The Contractor certifies, by entering into this Contract, that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.**

B. **The Contractor certifies that it has verified the suspension and debarment status for all sub-contractors receiving funds under this Contract and shall be solely responsible for any paybacks and or penalties that might arise from non-compliance. Contractor shall immediately notify the State if any sub-contractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate work done by the sub-contractor pursuant to this Contract.**

15. Default by State. If the State, sixty (60) days after receipt of written notice, fails to correct or cure any breach of this Contract, then the Contractor may cancel and terminate this Contract and collect all monies due up to and including the date of termination.

16. Disputes.

A. **Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.**

B. **The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim within**

ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

1. The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

17. Drug-Free Workplace Certification. The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor has been convicted of a criminal drug violation occurring in the Contractor's workplace.

False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, Contractor hereby further agrees that this contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) my available drug counseling, rehabilitation, and employee assistance

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees. indemnify the State under this contract shall not be limited by the insurance required in this Contract.

Any and all photo identification, badges or official office insignia provided to Contractor are to be used in the furtherance of official investigations being conducted by the Office of Attorney General (hereinafter 'the office'), and are the property of the office. Any use other than for official office investigations is prohibited and any prohibited use of the office credentials is grounds for termination of this Contract. Further, it is understood that this badge and designation gives Contractor no law enforcement authority.

23. **Licensing Standards.** The Contractor and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State shall not be required to pay the Contractor for any services performed when the Contractor or its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, the Contractor shall notify State immediately and the State, at its option, may immediately terminate this Contract.

24. **Nondiscrimination.** Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this Contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract. The Contractor's execution of this Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

25. **Notice to Parties.** Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

Brent Embrey
Office of the Attorney General
302 West Washington Street
Indiana Government Center South, 5th Floor
Indianapolis, IN 46204

B. Notices to the Contractor shall be sent to:

Identifax Investigative Services, Inc.
P.O. Box 14884
North Palm Beach, FL 33408

26. **Payments.** All payments shall be made in accordance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.

27. Penalties/Interest/Attorney's Fees. The State will in good **faith** perform its required obligations **hereunder and does not agree** to pay **any** penalties, liquidated damages, interest, or attorney's fees, except as **required by Indiana law**, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting **from** the State's **failure** to make prompt payment **shall** be based solely on the amount of **funding originating** from the State and shall not be based on **funding** from federal or other sources,

28. Progress Reports. ~~The Contractor~~ shall submit **progress reports** to the State **upon request**. ~~The report shall be~~ oral, unless the State, upon receipt of the oral report, **should deem** it necessary to have **it in** written **form**. The **progress reports shall** serve the **purpose** of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

29. Renewal Option. This Contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the **State Budget Director** in compliance with IC 5-22-17-4. ~~The term of the renewed contract may not be longer than the term of the original contract.~~

30. Severability. The invalidity of any **section**, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of **this** Contract.

31. Taxes. The State is **exempt** from state, federal, and local taxes. The State will **not** be **responsible** for **any taxes** levied **on the Contractor** as a **result** of this **Contract**.

32. Termination for Convenience. This Contract may be **terminated**, in whole ~~or~~ in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be **effected by** delivery to the **Contractor** of a Termination Notice at Least **thirty (30)** days prior to the termination effective date, **specifying** the extent to which performance **of services** under such termination becomes effective. The **Contractor shall** be compensated for **services** properly rendered prior to the effective date of **termination**. The State will not be **liable** for services performed after the effective date of **termination**. The **Contractor shall be compensated** for **services** herein provided **but in no case shall total** payment **made to the Contractor** exceed the original contract price or **shall** any price increase **be** allowed on individual line items if canceled only in part prior to the **original termination date**.

33. Non-Collusion and Acceptance. The undersigned attests, subject to the penalties for perjury, that ~~he/she~~ is the Contractor, or that ~~he/she~~ is the properly authorized representative, agent, member or ~~officer of the Contractor~~, that ~~he/she~~ has not, nor has any other ~~member~~, employee, ~~representative, agent or officer of the Contractor~~, directly or indirectly, to the best of the undersigned's **knowledge**, entered into or **offered** to enter into any combination, collusion or agreement to **receive or pay**, and **that** ~~he/she~~ has not received or paid, any **sum of money or other consideration** for the execution of **this** Contract other than that which appears upon the face of this Contract.

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In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties having read and understand the foregoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

Identifax Investigative Services, Inc.:

By: [Signature]
Printed Name: James C. Priddy III
Title: President
Date: January 13, 2006

Office of the Attorney General:

By: [Signature]
Printed Name: Gregory F. Zake
Title: Chief Deputy
Date: 1-29-06

Department of Administration

Darwin S. Patterson (for)
Earl A. Goode, Commissioner

Date: 2/27/06

State Budget Agency

Zachary G. [Signature] (for)
Charles Schalliol, Director

Date: 3/1/2006

**Approved as to Form and Legality:
Office of the Attorney General**

Elizabeth A. Brown (for)
Stephen Carter, Attorney General

Date: 3-6-06